

CHECKLIST FOR 8(a)(3) Allegations¹

I. Discipline or Discharge of an Employee

A. Overview of Employer's Operations

1. Nature of business
2. Number of employees at this facility
3. Overview of management hierarchy

B. Employment History

1. Date hired; by whom
2. Job classification and duties; pay rate, shift, and/or hours of work
3. Names and titles of relevant supervisors or agents (Get facts relating to supervisory or agent status)
4. Date of promotions, demotions, raises, and wage cuts
5. Seniority standing
6. Discipline prior to the alleged discriminatory conduct (Dates and particulars)
7. If employed a short time, was employee probationary?
8. Employee handbook (Get copy)
9. Collective-bargaining agreement (Get copy)

C. Conduct Alleged to be Violative (e.g. suspension, discharge)

1. When it occurred
2. Events immediately preceding the discriminatory act
3. If written discipline or discharge, what does the discipline say?
4. What reason was given and what was said when the discipline (written or oral) was issued?
5. Describe the incident that the Employer claimed prompted the discipline or discharge
6. Does the discriminatee admit or deny the conduct for which he or she was disciplined?

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This checklist is intended as an aid to identify some key areas to cover in an affidavit and is *not* a comprehensive list of questions or issues. Other areas to include in the affidavit will be determined by legal research and by responses to the items in the checklist.

D. Discriminatee's Union Activity – (include a detailed description of conduct and date(s) when it occurred)

1. Union officer – steward, committeemen, etc.
2. Member of organizing committee
3. Signed card (Get date, location where received card, and how and when employee returned card)
4. Attended union meeting (get dates, place and others present)
5. Distributed union cards or literature
6. Wore union insignia (Describe when worn; how often; where worn)
7. Union stickers on vehicle, lunch box, etc.
8. Participated in strike or picketing
9. Witness or potential witness at NLRB hearing; election observer

E. Employer Knowledge of Discriminatee's Union Activity

1. Size of plant
2. Through conversations with or statements by supervisors
 - a) Get dates, times, places, those present, and precisely what was said
3. Observation by supervisor
 - a) Get dates, times, places and those present.
4. Through letter from union or organizing committee members
5. Relationship to known adherents

F. Causation

1. Statements showing anti-union sentiment
2. Timing
3. Pretext
 - a) Disparate treatment (include both the disparate treatment and Employer knowledge of the disparity)
 - b) Departure from past practice
 - c) Shifting explanations by the employer
 - d) Failure to investigate
 - e) Proffer of non-discriminatory explanation that is not true

G. Post Discharge Events

1. Did employee file for unemployment or file charges with EEOC or other agency?
2. Did Employer make statements to other employees regarding the reason for the discharge
3. Did discriminatee file a grievance or participate in internal dispute resolution process? If yes, describe Employer's statements or positions, evidence presented, and outcome

II. Granting, Denying , or Removing a Benefit (or Other Term and Condition of Employment)

- A. What was the benefit (term)?**
- B. When was decision made to grant, deny, or remove the benefit (term)?**
- C. When was the decision to grant or deny, or remove the benefit (term) communicated to employees?**
- D. When was the benefit (term) change implemented? Include timing in relation to union or concerted activity?**
- E. Who received or was denied the benefit? All employees or all employees in a certain classification or only a few employees?**
- F. What did Employer supervisors or agents say about granting, denying, or removing the benefit?**
- G. What was past practice, if any, regarding this benefit?**

III. Discharge Pursuant to a Union Security Clause

- A. Check the clause for validity**
- B. Under what terms and conditions were employees generally admitted to membership in the Union**
 1. What, if any, variation was made in case of alleged discrimination?
- C. Was membership denied or terminated for reasons other than failure to tender periodic dues and initiation fees required of other employees?**
 1. If so, what are the facts?
 2. If not, what are the facts surrounding failure to tender dues or initiation fees?

IV. Mass Layoffs or Discharges

- A. Compare Union activity of alleged discriminatee to union activity of those retained by the Employer**
- B. What is past practice regarding layoffs and selection for layoffs**
- C. What reasons did Employer give employees for layoffs and their selection?**
- D. Is there any evidence to support or rebut reasons given by Employer for layoff and employees' selection**
- E. Prior to layoff, did employees observe or hear anything that would make layoff be likely or unlikely?**
- F. Since the layoff, has anyone been hired or recalled from layoff**

V. Failure to Recall from Strike

- A. Were 8(d) or 8(g) (health care) notices given by either party?**
 - 1. If Union asserts that Employer locked out, evidence of same should be obtained (Source for information may be Federal Mediation and Conciliation Service)
- B. Where strike is asserted to be unfair labor practice strike**
 - 1. Date strike began
 - 2. Evidence indicating cause of strike at the beginning and after any ulps
 - 3. Number of employees who joined strike at its beginning; number who did not
 - 4. Number of employees who have returned after striking; number of union and nonunion members in this category
 - 5. Number of employees who applied for reinstatement and have been refused
 - 6. Evidence indicating whether refusal to reinstate was discriminatory, where jobs were available
 - a) Attempts of parties to settle strike
 - b) Attempts of Employer agents to persuade individual strikers to return to work
 - c) Circumstances, terms, dates of any Union offer to return to work; i.e., what did offer consist of?

- d) Did employees make individual offers to return to work? If so, how (verbal or in writing), to whom, what said, etc.?
- e) Where Employer asserts that strike was in violation of no-strike clause in contract, (or unprotected or illegal for any reason):
 - (1) Was there condonation of the strike? What was said to induce employees to return to work?
 - (2) What, if any, reservations did Employer make (e.g. return to work subject to Employer's investigation to ascertain who instigated strike so "appropriate action" can be taken)?

C. Where striker replaced, is replacement permanent or temporary?

- 1. What was replacement told at time of hire?
- 2. What did newspaper ads say?
- 3. Did replacement sign anything?
- 4. What job was replacement assigned?
- 5. What was replacement told by Employer about status?
- 6. What job assigned?

VI. Remedies

- A. Does Employer communicate with employees via e-mail or electronically**
- B. Evidence of chill in potential 10(j) cases**